

**FILED**

MAR 31 2004

  
CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

\*\*\*\*\*

JAMES G. ABOUREZK,

Plaintiff,

vs.

PROBUSH.COM, INC., a Pennsylvania  
corporation,

Defendant.

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CIV. #03-4146

**DEFENDANT PROBUSH.COM'S  
ANSWER AND JURY TRIAL DEMAND**

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COMES NOW the Defendant, ProBush.com, and does hereby respectfully submit it's  
Answer to the Plaintiff's Complaint, does hereby state and allege as follows:

1.

The Plaintiff's Complaint fails to state a claim upon which relief can be granted.

2.

The Court lacks subject matter jurisdiction and/or personal jurisdiction over this  
Defendant.

3.

The Defendant denies each and every matter, allegation, and thing in Plaintiff's  
Complaint except as specifically admitted herein. The Defendant admits that it owns and  
operates the ProBush.com website, and that Senator Abourezk, a public figure, is included with  
more than one hundred other celebrities, politicians, and other public figures on the website's  
satirical and politically expressive "Traitor List."

4.

As to the remaining facts, allegations, and legal claims set forth in Plaintiff's Complaint,

these Defendants specifically deny such facts, allegations, and legal claims, and remit the Plaintiffs to strict proof thereof.

5.

As an affirmative defense, the Plaintiff's claims are barred by the First and Fourteenth Amendments to the United States Constitution, and Article VI, § 5 of the South Dakota Constitution.

6.

As an affirmative defense, the communication in question is not defamatory.

7.

As an affirmative defense, the communication in question does not contain a provably false connotation.

8.

As an affirmative defense, the communication in question cannot reasonably be interpreted as stating actual facts about the Plaintiff.

9.

As an affirmative defense, the communication in question is constitutionally protected political speech, rhetorical hyperbole, vigorous epithet, and/or parody.

10.

As an affirmative defense, the communication in question was a statement of opinion relating to a matter of public concern.

11.

As an affirmative defense, the communication in question was privileged under the law.

12.

As an affirmative defense, the plaintiff is a public figure for First Amendment purposes.

13.

As an affirmative defense, the communication in question was not made with actual malice as defined under First Amendment jurisprudence.

14.

As an affirmative defense, the Plaintiff's claims are completely barred by controlling United States Supreme Court precedent.

15.

As an affirmative defense, the Plaintiff's claims are barred by state law.

16.

As an affirmative defense, this action is barred pursuant to SDCL 3-21-8, 9 et seq.

17.

The Defendant denies the nature, extent, and amount of damages claimed by the Plaintiff and remits the Plaintiff to strict proof thereof.

18.

As an affirmative defense, the Plaintiff has failed to mitigate his damages.

19.

WHEREFORE, Defendant ProBush.com prays that Plaintiff's Complaint be dismissed with prejudice and that the Plaintiff take nothing. Further, the Defendant moves this Court for an Order permitting it to recover its costs, disbursements, and attorney's fees, and such other and further relief as the Court deems just and proper under the circumstances.

Dated this 31<sup>st</sup> day of March, 2004.

**JOHNSON, HEIDPRIEM, MINER,  
MARLOW & JANKLOW, L.L.P.**

BY RA Parsons  
Ronald A. Parsons, Jr.  
P.O. Box 1107  
Sioux Falls, SD 57101-1107  
(605) 338-4304

*Attorneys for the Defendant ProBush.com*

**DEMAND FOR JURY TRIAL**

The Defendant hereby respectfully demands a jury trial on all issues so triable.

RA Parsons  
Ronald A. Parsons, Jr.

**CERTIFICATE OF SERVICE**

This certifies that a true and correct copy of the foregoing **Defendant ProBush.com's Answer and Jury Trial Demand** was served by first class mail, postage prepaid, upon the following:

Todd D. Epp  
Of Counsel  
Abourezk Law Offices, P.C.  
P.O. Box 1164  
Sioux Falls, SD 57101-1164

*Attorneys for the Plaintiff*

on this 31 day of April, 2002.

RA Parsons  
Ronald A. Parsons, Jr.